
A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. The legislature finds that Act 170, Session
2 Laws of Hawaii 2011, directed the office of Hawaiian affairs to
3 convene a Native Hawaiian justice task force and produce a
4 report regarding the disproportionate representation of Native
5 Hawaiians in the State's criminal justice system. The report
6 made the following findings:
- 7 (1) That the disparate impact of the criminal justice
8 system on Native Hawaiians is apparent at every stage
9 of the criminal justice system;
- 10 (2) That given a determination of guilt, Native Hawaiians
11 are not only more likely to get a prison sentence, but
12 they are more likely to receive a longer prison
13 sentence than other racial groups;
- 14 (3) That Native Hawaiians make up the highest percentage
15 of Hawaii inmates incarcerated in out-of-state
16 facilities. In 2005, forty-one per cent of the Hawaii



1 inmates in out-of-state facilities were Native
2 Hawaiians; and

3 (4) That incarceration in an out-of-state facility is
4 particularly traumatic for Native Hawaiians.

5 Culturally, Native Hawaiians have a strong connection
6 to family, the land, and the community. Being in an
7 out-of-state prison cuts them off from supportive
8 communities and families that give them a reason to
9 exit prison as soon as possible.

10 The task force also made recommendations that the Hawaii inmates
11 currently housed in private, out-of-state prisons should be
12 returned to the State as soon as practicable and that the State
13 should consider passing legislation prohibiting the future use
14 of private for-profit correctional facilities.

15 In this regard, the legislature finds that the management
16 and operation of a correctional facility involves functions that
17 are inherently governmental. The exercise of police powers over
18 individuals of this State should not be privatized and managed
19 by out-of-state correctional facilities.

20 The legislature further finds that methamphetamine related
21 offenses are the only drug offenses in the State that carry a



1 mandatory sentence. According to the findings of the Native
2 Hawaiian justice task force, Native Hawaiians are more likely
3 than any other racial or ethnic group in the State to be charged
4 with a methamphetamine related offense, which contributes to the
5 disproportionate representation of Native Hawaiians in the
6 prison system.

7 The purpose of this Act is to take action on the findings
8 and recommendations of the Native Hawaiian justice task force
9 by:

- 10 (1) Prohibiting the transfer of Hawaii inmates to any
11 correctional facility that is not owned and operated
12 by and within the State; and
13 (2) Repealing the specific requirements for mandatory
14 minimum sentencing for methamphetamine offenses.

15 SECTION 2. Chapter 353C, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§353C- Prohibition on transfer of inmates to out-of-
19 state or private correctional facilities. Beginning on July 1,
20 2015, an inmate in the custody of the department shall be
21 transferred only to a correctional facility that is within the



1 State and is owned and operated by the State or one of its
2 political subdivisions."

3 SECTION 3. Section 712-1240.7, Hawaii Revised Statutes, is
4 amended by amending subsection (3) to read as follows:

5 "(3) Notwithstanding sections 706-620(2), 706-640, 706-
6 641, 706-659, 706-669, and any other law to the contrary, a
7 person convicted of methamphetamine trafficking in the first
8 degree shall be sentenced to an indeterminate term of
9 imprisonment of twenty years [~~with a mandatory minimum term of~~
10 ~~imprisonment of not less than two years and not greater than~~
11 ~~eight years]~~ and a fine not to exceed \$20,000,000 [~~;~~ provided
12 that:

13 ~~(a) If the person has one prior conviction for~~
14 ~~methamphetamine trafficking pursuant to this section~~
15 ~~or section 712-1240.8, the mandatory minimum term of~~
16 ~~imprisonment shall be not less than six years, eight~~
17 ~~months and not greater than thirteen years, four~~
18 ~~months;~~

19 ~~(b) If the person has two prior convictions for~~
20 ~~methamphetamine trafficking pursuant to this section~~
21 ~~or section 712-1240.8, the mandatory minimum term of~~



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1 ~~imprisonment shall be not less than thirteen years,~~
2 ~~four months and not greater than twenty years; or~~
3 ~~(e) If the person has three or more prior convictions for~~
4 ~~methamphetamine trafficking pursuant to this section~~
5 ~~or section 712-1240.8, the mandatory minimum term of~~
6 ~~imprisonment shall be twenty years]."~~

7 SECTION 4. Section 712-1240.8, Hawaii Revised Statutes, is
8 amended by amending subsection (3) to read as follows:

9 "(3) Notwithstanding sections 706-620, 706-640, 706-641,
10 706-660, 706-669, and any other law to the contrary, a person
11 convicted of methamphetamine trafficking in the second degree
12 shall be sentenced to an indeterminate term of imprisonment of
13 ten years [~~with a mandatory minimum term of imprisonment of not~~
14 ~~less than one year and not greater than four years]~~ and a fine
15 not to exceed \$10,000,000 [~~provided that:~~

16 ~~(a) If the person has one prior conviction for~~
17 ~~methamphetamine trafficking pursuant to this section~~
18 ~~or section 712-1240.7, the mandatory minimum term of~~
19 ~~imprisonment shall be not less than three years, four~~
20 ~~months and not greater than six years, eight months,~~



1 ~~(b) If the person has two prior convictions for~~
2 ~~methamphetamine trafficking pursuant to this section~~
3 ~~or section 712-1240.7, the mandatory minimum term of~~
4 ~~imprisonment shall be not less than six years, eight~~
5 ~~months and not greater than ten years; or~~

6 ~~(c) If the person has three or more prior convictions for~~
7 ~~methamphetamine trafficking pursuant to this section~~
8 ~~or section 712-1240.7, the mandatory minimum term of~~
9 ~~imprisonment shall be ten years]."~~

10 SECTION 5. Section 353-16.2, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§353-16.2 Transfer of inmates to out-of-state**
13 **institutions.** (a) The director may effect the transfer of a
14 committed felon to any correctional institution located in
15 another state regardless of whether the state is a member of the
16 Western Interstate Corrections Compact; provided that the
17 institution is in compliance with appropriate health, safety,
18 and sanitation codes of the state, provides a level of program
19 activity for the inmate that is suitable, and is operated by
20 that state, by any of its political subdivisions, or by a



1 private institution; and provided further that the transfer is
2 either:

3 (1) In the interest of the security, management of the
4 correctional institution where the inmate is presently
5 placed, or the reduction of prison overcrowding; or

6 (2) In the interest of the inmate.

7 (b) Terms and conditions of the transfer and any
8 reimbursement for expenses shall be agreed upon between the
9 department and the out-of-state correctional institution prior
10 to transfer.

11 (c) Notwithstanding the director's authority under
12 subsection (a), beginning on July 1, 2015, an inmate in the
13 custody of the department shall be transferred only to a
14 correctional facility that is within the State and is owned and
15 operated by the State or one of its political subdivisions."

16 SECTION 6. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



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1 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:

[Signature]

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JAN 29 2015



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Report Title:

Department of Public Safety; Hawaiian Affairs; Private Correctional Facilities; Methamphetamine Mandatory Minimum

Description:

Prohibits the transfer of inmates in the custody of the department of public safety to any correctional facility that is not operated by and within the State. Removes mandatory minimum sentencing for methamphetamine drug offenses.

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